

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 952 of 1999

with

SPECIAL CIVIL APPLICATION No 2968 of 1999

with

SPECIAL CIVIL APPLICATION No 2974 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

VISNAGAR JOOTH VIVID

KARYAKARI SAHAKARI MANDLI LTD

Versus

AGRICULTURAL PRODUCE MARKET

COMMITTEE

Appearance:

MR PK JANI for Petitioner in SCA No. 952/99

MR BS PATEL for Petitioner in SCA Nos.2968 &
2974 of 1999

M/S THAKKAR ASSOC. for Respondent No. 1

MR UA TRIVEDI, AGP for Resp.No. 4 & 5 in
SCA No. 952/99

MR PK SHUKLA, AGP for Respondent No. 2 in Special
Civil Application Nos. 2968 and 2975 of 1999

MR MANISH R BHATT for Respondent No. 3 in SCA
No.952/99

NOTICE SERVED BY DS for Respondent No. 5

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 17/09/1999

COMMON CAV JUDGEMENT

These petitions raise common questions of law and facts regarding non-renewal of the licence to carry on business in the areas within the jurisdiction of the Agricultural Produce Market Committee, Visnagar (hereinafter referred to as "the APMC") and were, therefore, heard together with the consent of the learned counsel for the parties. The petitions are, therefore, being disposed of by this common judgment. The learned counsel for the two contesting parties i.e. petitioner Cooperative Society whose licence for carrying on business in the market area of the respondent APMC is not renewed and the respondent APMC which has refused to renew the licence have been heard at length for final disposal.

2. Special Civil Application Nos. 2968 and 2974 of 1999 are filed by two proprietary firms carrying on business of dealing in the commodities covered by the provisions of the Gujarat Agricultural Produce Market Act. The petitioners challenge the order dated 12-4-1999 of the State Government allowing the appeal of the respondent APMC and reversing the order dated 8-3-1999 of the Director of Agricultural Produce and Rural Marketing by which order the Director had allowed the appeal of the present petitioners and set aside the Resolution dated 5-12-1998 of the respondent APMC rejecting the petitioners' application for renewal of the petitioners' licence for the year 1998-99. It appears that the petitioners of these two petitions are belonging to the same group as the petitioner of Special Civil Application No. 952 of 1999 and, therefore, the facts narrated in Special Civil Application No. 952 of 199 are set out in extenso.

3. The petitioner in Special Civil Application No. 952 of 1999 is a Cooperative Society registered under the Cooperative Societies Act since 1993. The petitioner Society had taken a licence as a trader from the Agricultural Produce Market Committee, Visnagar (hereinafter referred to as "the APMC") and is carrying on business of purchasing and selling agricultural produce in the market area of the APMC since 1993. Under the provisions of the Gujarat Agricultural Produce Markets Act, 1963 (hereinafter referred to as "the Act") read with the Gujarat Agricultural Produce Market Rules, 1965 (hereinafter referred to as "the Rules"), where there is an Agricultural Produce Market Committee, a

person cannot carry on the business of purchasing or selling agricultural produce except in the market area under the jurisdiction of the APMC, and no such business can be carried on except under a licence to be granted by the APMC which is governed by a Committee comprising of elected representatives of agriculturists and Cooperative Societies of different kinds. The elections are held after an interval of four years. The validity period of the licence is one year commencing from 1st October and ending on 30th September of the next year. The Licensee is required to apply for renewal of the Licence before expiry of the licence period. The present dispute has arisen on account of the decision of the respondent APMC not to renew the licence of the petitioner Society for the year commencing from 1-10-1998. According to the petitioner society, its turn over for the year 1997-98 ending on 30-9-1998 was to the tune of crores of rupees and its profit was Rs.18,56,000/-. It is necessary to set out the history of the previous litigations as the same have a bearing on this case.

3.1 The petitioner Society had earlier filed Special Civil Application No. 5218 of 1997 making a grievance that though it has a valid licence till 30-9-1997 it was being prevented from doing business on the basis of that licence. In response to the notice issued by this Court, the learned counsel for the APMC made a statement that no hinderance or impediment would be caused to the petitioner-Society in carrying on its activities from the market area of the APMC till the licence remained operative. The Court accordingly issued direction on that basis and disposed of the said petition by order dated 28-6-1997.

3.2 However, when the petitioner Society applied for renewal of the Licence for the next year i.e. for the period from 1-10-1997 till 30-9-1998, the licence was not renewed and therefore, the petitioner society filed an appeal before the Director of Agricultural Marketing and Rural Finance (hereinafter referred to as "the Director" or "the Director of Agricultural Marketing") under Section 27 of the Act. In that appeal after giving the APMC an opportunity of being heard, the Director passed an interim order dated 15-10-1997 in favour of the petitioner restraining the APMC from preventing the petitioner from functioning in the market area. Since the APMC was not complying with the said interim order, the petitioner filed Special Civil Application No. 8002 of 1997, wherein this Court passed an ad-interim order directing the APMC to implement the interim order of the Director subject to the directions that may be given by

the Director after hearing the parties. That petition was ultimately disposed of on 18-11-1997 after hearing the learned counsel for the parties and in view of the statement made on behalf of the APMC that it would permit the petitioner to carry on its business activities till its renewal application is decided and for a further period of one week from the date of intimation for rejection, in case the application for renewal is rejected. In view of the aforesaid statement the parties agreed to withdraw the proceedings pending before the Director and before the State Government.

3.3 Ultimately, by Resolution dated 13-2-1998 of the licence sub-committee the APMC rejected the renewal application of the petitioner Society for the year commencing from 1-10-1997 and the said decision was challenged by the society in Special Civil Application No. 1197 of 1998 wherein this Court issued notice and granted ad-interim injunction in favour of the petitioner society requiring the APMC to permit the petitioner society to carry on the business in the market area. When the said petition was heard on 21-9-1998, this Court passed an order continuing the interim order upto 30-9-1998 with liberty to the petitioner to apply for renewal of the licence for the year commencing from 1st October 1998 with an observation that if the APMC takes decision against the petitioner, it would be open to the petitioner to approach the Director of Agricultural Marketing.

3.4 On 21-9-1998 the petitioner applied for renewal of the licence for the period from 1-10-1998 to 30-9-1999. The petitioner received a copy of caveat dated 22-9-1998 from the APMC in a proceeding which might be filed by the petitioner against the decision of the APMC to cancel the petitioner's licence. Thereafter on 3-10-1998 the petitioner was informed by the APMC about the rejection of the petitioner's application for renewal of the petitioner's licence as per its resolution dated 29-9-1998. The petitioner preferred Appeal No. 37 of 1998 before the Director of Agricultural Marketing. After hearing the parties, the Director passed a reasoned order dated 5-11-1998 observing that it is clear from the resolution (dated 29-9-1998) that the petitioner's application is rejected on the grounds given in the licence sub-committee's resolution dated 13-2-1998 and that the APMC was not able to prove that their routine work is going to be obstructed if the licence is given to the appellant. The Director, therefore, directed the APMC not to restrain the petitioner from working in the market area of the APMC till final disposal of the appeal

and posted the appeal for hearing on 3-1-1999.

3.5 The said order dated 5-11-1998 of the Director was challenged by the APMC before the State Government in revision and on 9-11-1998 the State Government granted an ex-parte stay of the order of the Director. The petitioner challenged the said ex-parte order before this Court in Special Civil Application No. 9438 of 1998 which was disposed of by the learned Single Judge on 12-11-1998 on the ground that the order under challenge was an ex-parte order and it was open to the petitioner to move the State Government to vacate the ex-parte order. The State Government after hearing the parties passed order dated 3-12-1998 staying the interim order dated 5-11-1998 of the Director till disposal of the Appeal by the Director. The petitioner Society challenged the said order dated 3-12-1998 of the State Government before this Court by filing Special Civil Application No. 10475 of 1998. The learned Single Judge, by order dated 14-12-1998, admitted the petition but refused to grant interim relief and directed the Director - the appellate authority - to hear the appeal within three weeks. The learned Single Judge observed that granting of stay at that stage would amount to allowing the petition and in that case the appeal pending before the Director would become infructuous.

4. Aggrieved by the aforesaid order, the petitioner-society preferred Letters Patent Appeal No. 1496 of 1998. When the said appeal came up for hearing, the Court was informed that the Director has already fixed the hearing of the appeal on 8.1.1999 and, therefore, the appeal was disposed of on 30.12.1998.

5. The Director respondent No. 4 herein thereafter heard the appeal and dismissed the same by his order dated 8.1.1999. The Director held that there was no illegality in the decision of the APMC in not renewing the licence in favour of the petitioner society for the year 1998-99 because the APMC had relied on the following grounds in support of the said decision :-

- (i) That when the President of the petitioner society was the Chairman of the respondent APMC, shops/godowns/lands were allotted/sold by the respondent APMC to the petitioner society at less than the market value without holding any auction.
- (ii) That the office bearers of the petitioner society had assaulted the present Chairman of the APMC on

9.7.1997 which had occasioned filing of the FIR and the accused were chargesheeted.

The Director observed that in view of the above, the APMC was justified in not renewing the licence as the carrying on business by the petitioner society would not be conducive to the smooth functioning of the APMC as contemplated by Rule 56 of the Gujarat APMC Rules.

It is against the aforesaid order dated 8.1.1999 of the Director-respondent No.4 herein that the present petition is filed.

6. The learned counsel for the petitioner submitted as under :-

6.1 The petitioner has been carrying on business in the market area of the APMC for the last many years. After their group lost in the election to the APMC held in the year 1996 the elected office bearers of the APMC belonging to the rival group have been bent upon driving the petitioner society and its supporters out of business. Earlier also the petitioner was, therefore, required to approach this Court by filing three petitions and on those occasions this Court had granted ad-interim/interim directions in favour of the petitioner because the petitioner society has been carrying on business with turn over of crores of rupees - as would be evident from the turn over for the year 1997-98 (from 1-10-1997 to 30-9-1998) which was more than Rs.5 Crores and the profit was Rs.18,56,000/-.

6.2 As regards the grounds on which the licence was refused by the APMC, the learned counsel for the petitioner submitted that the allegations were not only not relevant to statutory provisions contained in Rule 56, but were also baseless and in any case the allegations were against some of the office bearers in the past prior to 30-9-1997 for which the society members cannot be penalized. Moreover, apart from loss of business and loss of profit for the intervening period to all the members of the petitioner Cooperative Society with each passing day, the prospects of revival of its business and employment prospects for its employees would become bleak.

6.3 As regards the ground of allotment/sale of land to the APMC, the learned counsel for the petitioner has submitted that the allegations on this score are baseless and that the allotment/sale of the lands was as per the then prevailing practice of the APMC and that many other

persons were allotted shops/lands at the same rates/price. Moreover, allotment of shops/sale of land by the APMC to its members cannot be judged on the touch stone of the price at which the APMC had sold land to a commercial bank. It is further pointed out that the shops were allotted in the year 1985 and the lands for godown were sold in the year 1992. Apart from the fact that the petitioner societies carrying on business all these years did not cause any impediment to the smooth functioning of the APMC, the dispute about the allotment/sale of shops/lands is the subject matter of civil suits pending before the Court at Mehsana and in those civil proceedings interim injunction has been granted in favour of the petitioner society and against the respondent APMC. It is, therefore, submitted that non renewal of the licence in favour of the petitioner society on the ground of the aforesaid allotment/sale of shops/lands is not only extraneous but also runs counter to the judicial orders passed by competent Courts and, therefore, also the conduct on the part of the APMC is not only illegal but also contumacious.

6.4 As regards the ground of the pending criminal case, it is submitted that none of the office bearers of the petitioner society are involved in any such offence and that in any case no person who is arraigned as an accused in the aforesaid criminal case would remain as an office bearer of the petitioner society. It is further submitted that there are hundreds of members of the petitioner society and they need not be made to suffer on account of any alleged misconduct on the part of a few members of the petitioner society.

7. Mr BS Patel, learned counsel for the petitioners in Special Civil Application No. 2968 and 2974 of 1999 has adopted the aforesaid arguments of Mr Jani and has further submitted that the petitioners of the said petitions i.e. M/s K.B. Patel & Sons and M/s Kanjibhai Babaldas Patel are also made victims of the group rivalry and political vendetta. It is submitted that against the said petitioners the only ground for non-renewal of the licence is pendency of the criminal case in which none of the proprietors/partners of the said petitioners are involved. It is contended that far from any such involvement in any criminal case, when Kanjibhai B. Patel, petitioner of Special Civil Application No. 2974 of 1999 is himself a member of the respondent APMC and his continuance as a member of the APMC does not cause any impediment in the smooth functioning of the APMC, there is no conceivable reason or ground how continuance of business of his firm can cause any impediment in the

smooth functioning of the respondent APMC. It is further submitted by Mr BS Patel that the Director had allowed the appeals of the said petitioners against non-renewal of the licence by the APMC for the year 1998-99 and the Government erred in setting aside those orders in revision merely on the ground that the criminal case is pending without there being any involvement of any persons from the petitioner firms in the said criminal cases.

8. On the other hand, Mr NK Pahwa, learned counsel for the respondent APMC has vehemently opposed the petition and has submitted as under :-

8.1 The petitioner of Special Civil Application No. 952 of 1999 has an alternative remedy of preferring a revision application before the State Government under Section 48 of the APMC Act and when such statutory remedy is available, this Court may not exercise its jurisdiction under Article 226 of the Constitution. Reliance is placed on the decision of this Court in 1997(2) GLR 1593.

8.2 On merits, it is submitted that when four office bearers of the petitioner society (Special Civil Application No. 952/99) are involved in a criminal case of assault on the Chairman of the APMC, it is certainly a relevant ground for coming to the conclusion that continuance of business by the petitioner society would cause impediment to smooth functioning of the APMC. It is denied that the respondent APMC is acting mala fide or on account of any political consideration. It is submitted that all along the present management of the respondent APMC has been insisting that the shops and lands obtained by the petitioner society illegally should be returned to the respondent APMC and that till then the petitioner society may not be permitted to carry on business. It is submitted that such a stand cannot be considered to be mala fide or contrary to law. Mr Pahwa went to the extent of submitting that the bona fides of the respondent APMC would be clear from their offer that if such shops/lands are returned by the petitioner society to the respondent APMC, the respondent APMC would renew the licence in favour of all the petitioners in the present group of petitions notwithstanding pendency of the criminal case. It is also pointed out that recently the competent authority under the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1971 has passed an order directing the petitioner society to vacate the premises allotted to them on rental basis earlier which

order is subject to the stay orders granted by the Civil Court at Visnagar in Regular Civil Suit Nos. 58 and 60 of 1996. It is also submitted that the office bearers of the petitioner society are also carrying on business through another society carrying on business in the same market yard and, therefore, there will be no prejudice to them.

9. Mr MR Bhatt, learned counsel appearing for respondent No. 3-Prahladbhai Patel has submitted that baseless allegations of mala fides are made against respondent No. 3 merely because he is a sitting member of the Legislative Assembly. It is submitted that respondent No. 3 belongs to the Bharatiya Janata Party whereas the majority of the members of the respondent APMC belong to the Congress Party and, therefore, there is not even likelihood of respondent No. 3 making any attempt to help the present management of the APMC.

10. Having heard the learned counsel for the parties, it appears to the Court that though normally the Court would be inclined to relegate the petitioner of Special Civil Application No. 952 of 1999 to the statutory alternative remedy available to them, the very fact that the financial year of the APMC (1-10-1998 to 30-9-1999) is drawing to a close within about 13 days, requiring the petitioner of Special Civil Application No. 952/99 to approach the State Government in revision would not only make such revision application almost infructuous but would also jeopardize the petitioners' right to have their renewal application considered for the year 1999-2000 (from 1-10-1999 to 3-9-2000), because if the petitioners do not have the licence for this year (1-10-1998 to 30-9-1999) they would not have any locus standi for even applying for renewal of licence for the next year (1999-2000). Apart from that consideration, the very fact that the State Government has already reversed the decision of the Director and upheld the decision of the respondent APMC in rejecting the renewal application of the petitioners of Special Civil Application No. 2968 and 2974 of 1999 (which decision was also based on the pendency of the criminal case), it appears to the Court that no useful purpose would be served by requiring the petitioner of Special Civil Application No. 952 of 1999 to go before the same revisional authority.

11. Coming to the merits of the controversy between the parties, it is true that the respondent APMC has been relying on the disputed allotment/sale of shops/lands as the principal factor which has weighed with them for

rejecting the renewal application of the petitioner of Special Civil Application No. 952/99 but it cannot be gainsaid that this very allotment/sale of the properties in question is the subject matter of judicial proceedings before the Civil Courts at Visnagar and, therefore, it would not be proper to express any opinion in these proceedings with regard to dispute about the subject matter of those proceedings. In those proceedings, the Civil Court has granted interim relief in favour of the petitioner society and, therefore, passing of any order in the present proceedings either way would amount to prejudging the controversy which is the subject matter of those proceedings. Those properties are already and admittedly in possession of the petitioner society. On account of the continuance of the interim relief in those proceedings, even non renewal of the licence for the year 1998-99 or 1999-2000 is not going to confer any advantage on the respondent APMC, though it is going to result into loss of business to the petitioner society which has a large number of members and which was carrying on business with a turn over of crores of rupees in the year 1997-98 and it had earned profit of Rs.18,56,000/- in the said year. This Court, therefore, considers that the interests of the parties can be better safeguarded by directing in suo motu exercise of power under Article 227 of the Constitution that if and when the respondent APMC moves the Civil Court at Visnagar for expediting the trial of the suits in respect of the shops/lands in question, the Court at Visnagar shall hear and decide those suits with utmost expedition and preferably within six months from the date of filing of such application.

12. As regards the pendency of the criminal case, this also appears to be an off-shoot of the dispute between the parties about non renewal of the licence. Even according to the case of the respondents, the alleged assault took place on 9-7-1997 on account of the unsuccessful attempts made by the office bearers of the petitioner society for persuading the Chairman of the APMC to permit the petitioners to carry on business in the market area and refusal on the part of the Chairman to accede to their request. According to the petitioners, no such assault took place. In any case the said incident is also subject matter of pending criminal proceedings and Chairman of the petitioner Society (Special Civil Application No. 2974 of 1999) is already a sitting Director of the respondent APMC and participating in the proceedings of the APMC. It cannot, therefore, be said that continuance of business by the petitioners would cause impediment to the smooth functioning of the APMC. Anyhow, in order to allay the

apprehensions of the respondent APMC and to ensure that any accused who is arraigned and chargesheeted in the said criminal case does not cause any impediment in the smooth functioning of the respondent APMC, it would be just and proper to direct that no person who is arraigned and chargesheeted as an accused in the said criminal case shall be allowed to be an office bearer or be allowed to be continued as an office bearer of the petitioner society till the final disposal of the said criminal case.

13. In view of the above findings and the directions proposed to be given, it is not necessary for this Court to give any finding on the allegations of mala fides levelled by the petitioner against the respondents.

14. In the result, the petitions are allowed.
It is directed that -

I Subject to the conditions stipulated hereinafter,
the respondent APMC shall renew the petitioners' applications for renewal of the licence for carrying on business within the areas under the jurisdiction of the respondent APMC for the year ending on 30-9-1999. If the petitioners make applications for renewal of such licence for the year 1999-2000 (i.e. 1-10-1999 to 30-9-2000), the respondent APMC shall consider such applications, within one month, without being influenced by the factors which weighed with it while rejecting the petitioners' applications for renewal of licence for the year 1998-99 and till such decision is taken, the petitioner societies shall be permitted to carry on their business in the APMC areas.

II The aforesaid directions shall be effective upon the President/Proprietor/Partner of the respective petitioners filing their separate undertakings as under :-

(A) The Chairman of petitioner society
(Special Civil Application No. 952/99)
shall file an undertaking before this Court on or before 24-9-1999 that -

(i) the petitioner society shall
cooperate for expeditious
disposal of the cases pending
before the Civil Court at
Visnagar as and when the

respondent APMC moves an application before the Civil Court at Visnagar for expeditious hearing and disposal of such cases.

(ii) That in case the petitioner loses

in the aforesaid cases, subject to its right to challenge such decision/s in accordance with law before the appropriate forum and to pray for stay of operation/execution of such orders and subject to the orders which may be passed in such proceedings, the petitioner society shall hand over peaceful and vacant possession of the shops/lands in question to the respondent APMC within two months from the date of such decision without requiring the respondent APMC to institute any proceedings for recovering possession of such properties.

(iii) That no person who is arraigned

and chargesheeted as an accused in criminal case in respect of the incident which took place on 9-7-1999 shall be inducted or continued as an office bearer of the petitioner society.

(iv) That no office bearer, member or

employee of the petitioner society shall cause any impediment to the smooth functioning of the respondent APMC.

(B) The Proprietor/Partner of the petitioners

in Special Civil Application Nos. 2968 and 2974 of 1999 shall file separate undertakings before this Court on or before 24-9-1999 that -

(i) no person who is arraigned and

chargesheeted as an accused in criminal case in respect of the incident which took place on

9-7-1999 shall be inducted or continued as a partner or office bearer and

(ii) the Proprietor/partners/employees

of the petitioner shall not cause any impediment to the smooth functioning of the respondent APMC.

If these undertaking are not filed on or before 24-9-1999, the directions shall not have any effect.

III Upon the respondent APMC moving application/s before the Civil Court at Visnagar for expeditious hearing of Regular Civil Suit Nos. 58 and 60 of 1996 in respect of the allotment/sale of shops/lands to the Visnagar Jooth Vividh Karyakari Sahakari Mandali Ltd., the said Court shall hear and decide such proceedings within six months from the date of filing of such application/s.

15. The petitions are accordingly allowed in terms of the aforesaid directions and subject to the aforesaid conditions.

September 17, 1999 (M.S. Shah, J.)

sundar/-